

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 14-16

BALTIC AUTO SHIPPING, INC.,

Complainant,

— vs. —

**MICHAEL HITRINOV
a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC.,**

Respondents.

**COMPLAINANT’S MOTION FOR A TELEPHONIC CONFERENCE AND FOR AN
ORDER PRECLUDING RESPONDENTS FROM RELYING UPON DOCUMENTS
WHICH THEY HAVE NOT PRODUCED IN CONNECTION WITH THE
STATUTE OF LIMITATIONS ISSUE**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission’s (the “Commission”) Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainant, through its Counsel, Marcus A. Nussbaum, Esq. respectfully submits this brief in support of its motion and request for telephonic conference, seeking an order precluding the respondents from relying upon various documents in support of their counterclaim. Specifically, this motion is to request an order precluding the respondents from generating, after the fact, the house bills of lading and freight invoices which they have already stated, on the record, were not created during the course of the parties’ conduct of business between 2007 and 2012. The complainants also request that the Commission limit the respondents to relying, in support of their counterclaim, solely upon the types of documents which they have already provided, and which are, to wit: email correspondence, spreadsheets, telex releases, and documents relied upon by respondents in support

of their motion for partial summary decision on the issue of the statute of limitations and the settlement agreement.

As the Commission may recall, during the recent telephonic conference on the issue of discovery on March 12, 2015, there was oral argument regarding complainant's request that the respondents provide the house bills of lading and freight invoices for the shipments at issue in this action. During oral argument, and in their motion papers, the respondents have maintained the position that the house bills of lading and freight invoices were not generated because it was not the parties' custom and practice to do so.

In light of the fact that the respondents have maintained that the parties ceased doing business with one another in late 2011, it appears as though respondents' counterclaim may be time barred. However, due to the fact that the allegations in paragraphs "2" through "8" of respondents' counterclaim do not identify what shipments are covered under their counterclaim, it is not possible to ascertain the dates of those shipments. As set forth in the 2011 settlement agreement, the respondents were not under an obligation to release shipments until the complainants paid for them in full. If the respondents are alleging that there are shipments that took place which are not time barred and not covered under the settlement agreement, then this issue must be addressed up front, prior to respondents' motion for partial summary decision on the time bar issue. It is also respectfully submitted that after this Commission rules on the respondents' motion for partial summary decision on the potential time bar to complainant's claims, that it would be unfair and prejudicial if the respondents were allowed to introduce new documents in support of their counterclaim (which Complainant already requested and did not receive).

In the complainant's brief in opposition to respondents' motion for the telephonic conference that took place on March 12, 2015, the undersigned raised an issue which was not addressed at the conference:

“In light of the fact that the respondents have alleged a counterclaim in the amount of \$200,000.00 based upon complainant’s alleged failure “to pay for a number of shipments” (Respondent’s Answer and Counterclaim, ¶¶ 6-7) how will it be possible for them to move forward with their counterclaim, without the production of documents (such as ocean liner bills of lading, HBOL’s, and freight invoices) identifying complainant as the shipper?”

The purpose of this motion is simple, and is to simply request a telephonic conference so that a ruling on the issues set forth above can be addressed up front.

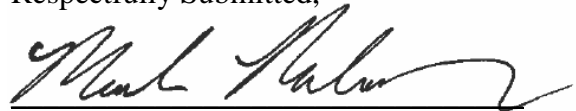
It is therefore respectfully requested that the Commission issue an order: (1) precluding the respondents from producing, after the fact, the house bills of lading and freight invoices which they have already stated, on the record, were not created during the course of the parties’ conduct of business between 2007 and 2012; and (2) limiting the respondents to relying, in support of their counterclaim, solely upon the types of documents which they have already produced, and which are, to wit: email correspondence, spreadsheets, telex releases, and documents relied upon by respondents in support of their motion for partial summary decision on the issue of the statute of limitations.

CONCLUSION

Accordingly, for the reasons set forth above, complainant requests that the instant motion be granted in its entirety.

Dated: March 18, 2015
Brooklyn, NY

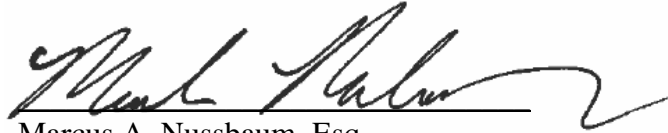
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANT'S MOTION FOR A TELEPHONIC CONFERENCE AND FOR AN ORDER OF PRECLUSION** upon Respondents' Counsel, The Law Office of Doyle & Doyle, with the address of 636 Morris Turnpike, Short Hills, NJ 07078 by first class mail, postage prepaid, and by email (gdoyle@doyelaw.net).

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Dated: March 18, 2015 in Brooklyn, New York.